

Application No.: 10/795,944

Docket No.: 30811/40225

REMARKS

Claims 14-26 are pending and at issue. The office action has rejected these pending claims under 35 U.S.C. §112, first paragraph, based on language in the preambles of independent claims 14, 21 and 23. The office action has also rejected the preambles of these same claims under 35 U.S.C. §112, second paragraph. In the only prior art rejection, the office action rejects the pending claims as obvious over Held et al. (USPN 6,491,820). In addition to this prior art rejection, the office action rejects the pending claims under the judicially created doctrine of obviousness-type double patenting based on various claims from U.S. Patent Nos. 6,540,919; 6,491,810; 6,395,176; and 6,709,594. In light of the above amendments, the following remarks, and the accompanying terminal disclaimer, the applicants respectfully traverse all rejections and request reconsideration.

35 U.S.C. §112 Rejections

The preambles of claims 14, 21 and 23 have been amended above. The rejections under the first and second paragraphs of 35 U.S.C. §112 are traversed.

35 U.S.C. §103 Rejection Based on Held et al.

The office action has rejected claims 14-26 based on the teachings of Held et al. (USPN 6,491,820) at column 10, line 42 through column 11, line 46. This Held et al. patent issued on December 10, 2002, from U.S. Application Serial No. 09/998,651, which is a continuation-in-part of parent application U.S. Application Serial No. 09/612,776. The present application also claims priority back to U.S. Application Serial No. 09/612,776. The language relied upon by the examiner in rejecting claims 14-26 (i.e., column 10, line 42 through column 11, line 46) is virtually identical to language in this U.S. Application Serial No. 09/612,776. *See, e.g.*, col. 2, l. 27 – col. 3, l. 28 of USPN 6,395,176, which issued from U.S. Application Serial No. 09/612,776. In other words, the ‘prior art’ teachings relied upon by the office action are not prior art at all, but teachings found in U.S. Application Serial No. 09/612,776 to which the present application claims priority. Thus, the rejection based on Held et al. (USPN 6,491,820) is improper and must be withdrawn.

The rejection of claims 14-26 is traversed.

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Double Patenting Rejection

The office action has rejected claims 14-26 under the judicially created doctrine of obviousness-type double patenting based on U.S. Patent Nos. 6,540,919; 6,491,820; 6,395,176; and 6,709,594. The applicants attach herewith a terminal disclaimer that obviates the rejection. Reconsideration is requested.

Information Disclosure Statements

The applicants' representatives note that an information disclosure statement was filed on July 12, 2004, but not considered. The applicants request that the information cited therein be considered. Additionally, for completeness sake, the applicants' representatives are filing herewith a supplemental information disclosure statement citing information of record in the priority applications of the present case.

One of the references cited in the July 12, 2004 information disclosure statement (JP 1-210100) was originally cited in two Japanese counterparts of priority applications for the present case. The reference was cited against claims in these particular Japanese applications. Although the reference is not the subject of a rejection in the present application, the applicants attach herewith a declaration of inventor Dr. Satya P. Chauhan regarding this reference. The declaration is being filed now as a conservative measure in the event the examiner determines that the reference is relevant to the instant claims, and also to expedite issuance of the present application. If the examiner would like to discuss the declaration or any art of record, please feel free to contact the below-signed representatives.

As provided above, the pending application is in condition for immediate allowance.

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Respectfully submitted,

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